

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA FOR
THE USE AND BENEFIT OF
ELLIOTT ELECTRIC SUPPLY, INC.

vs.

J & J MAINTENANCE, INC., AND
LIBERTY MUTUAL INSURANCE
COMPANY

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CIVIL ACTION NUMBER

CIV-15-282-C

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, United States of America For The Use And Benefit Of Elliott Electric Supply, Inc., complaining of J & J Maintenance, Inc., hereinafter referred to as (“J&J Maintenance”), and Liberty Mutual Insurance Company, hereinafter referred to as (“Liberty”).

I.
PARTIES

1.1 Elliott Electric Supply, Inc., hereinafter referred to as (“Plaintiff”), is a corporation duly incorporated pursuant to the laws of the State of Texas.

1.2 Defendant J & J Maintenance, Inc. is a corporation incorporated pursuant to the laws of the State of Delaware and may be served with process by having the summons and a copy of this complaint delivered to its registered agent, The Corporation Company, at 1833 S. Morgan Rd., Oklahoma City, Oklahoma 73128.

1.3 Defendant Liberty Mutual Insurance Company of America is an insurance company whose principal office and place of business at 175 Berkeley Street, Boston, Massachusetts 02116, and may be served with process by delivering the summons and a copy of this complaint to its registered agent, Oklahoma Insurance Commission, at Five Corporate Plaza, 3625 NW 56th, Suite 100, Oklahoma City, Oklahoma 73112-4511.

II.

JURISDICTION AND VENUE

2.1 This Court has exclusive jurisdiction pursuant to 40 U.S.C. §3133(b), as this suit is based upon a claim for materials supplied to a subcontractor, for work for the construction, alteration, or repair of a public building or public work of the United States, which is governed by federal law.

2.2 Venue is proper in this District under 40 U.S.C. §3133(3), as the contract which is the subject matter of this suit was performed in Ft. Sill, Lawton, Comanche County, Oklahoma.

III.

CAUSE OF ACTION

3.1 Heretofore, the United States of America awarded a construction contract to Defendant J&J Maintenance for the construction of the Fort Sill Army Base, Reynolds Army Community Hospital (RIOR), Repair and Renewal of Operating Rooms; Contract No.: W91278-10-D-0043-ZW 15, hereinafter referred to as the (“Construction Project”). Said contract was in excess of \$100,000.00 and was for the construction, alteration, or repair of

a public building or public work of the United States. J&J Maintenance, as the prime contractor, awarded a subcontract to International Electric, Inc. (“International Electric”) for a portion of the work performed on the Construction Project. International Electric in turn contracted with Plaintiff for the purchase of electrical materials to be used in the performance of the above-referenced contracts.

3.2 Pursuant to 40 U.S.C. §3131, commonly known as the Miller Act, before any contract exceeding \$100,000.00 in amount for the construction, alteration or repair of any public building or public work for or on the property of the United States is awarded to any person, such person shall furnish a payment bond for the protection of all persons supplying labor and material in the prosecution of the work provided in said contract for the benefit and use of the persons so supplying labor and material.

3.3 As required by the Miller Act, Defendant J&J Maintenance, as principal, and Defendant Liberty, as surety, executed a payment bond for the use and benefit of all persons supplying labor and/or material in the prosecution of the work provided in said contract. The payment bond is numbered 58S204209. A copy of the Payment Bond is attached hereto as Exhibit “A” and incorporated herein for all purposes. Plaintiff supplied materials in the prosecution of the work provided in said contract in the amount of \$39,920.05 and, therefore, is a direct obligee and beneficiary of said bond.

3.4 Plaintiff has given all statutory notices required to perfect its claim on the subject payment bond. All conditions precedent pertaining to Plaintiff's perfection if its

claim on the subject payment bond have been performed or have occurred. Plaintiff has perfected its payment bond claim against all Defendants in the amount of \$39,920.05, pursuant to the provisions of the Miller Act. Demand for payment has been made on Defendants, but payment has not been made, all to Plaintiff's damage. Defendants are jointly and severally liable to Plaintiff for all claims asserted herein.

3.5 Plaintiff is also entitled to prejudgment and post-judgment interest as may be allowed by law. Plaintiff is further entitled to reasonable attorneys' fees and costs against Defendants, because International Electric agreed in writing to pay reasonable attorney's fees and costs of collection which are justly due Plaintiff as a result of this proceeding. A redacted copy of the Application for Credit is attached hereto as Exhibit "B". Specifically, the Application for Credit submitted by International Electric to Plaintiff, which is part of contract between Plaintiff and International Electric pertaining to the materials sold by Plaintiff to International Electric for use on the Construction Project, provides in part:

It is further agreed that each unpaid Invoice will bear interest at the maximum amount allowed by law. It is also understood and agreed that if this sale is placed in the hands of an attorney, and/or collection agency, the Buyer agrees to pay all expenses, including court costs, legal and administrative expenses, attorney and/or collection agency fees paid or incurred by ELLIOTT ELECTRIC SUPPLY.

IV.

CONDITIONS PRECEDENT

4.1 All conditions precedent have been performed or have occurred as required.

V.
REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays that Defendants be cited to appear herein as provided by law, and that upon final hearing hereof, that Plaintiff have judgment of and from J&J Maintenance, Inc. and Liberty Mutual Insurance Company, jointly and severally, for such sum of \$39,920.05, plus interest, attorneys' fees, costs, and such other and further relief to which Plaintiff may show itself entitled.

Respectfully submitted,

MATTHEWS, SHIELS, PEARCE,
KNOTT, EDEN & DAVIS, L.L.P.

By: /s/ Misti L. Beanland
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